

SENATE No. 1881

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to economic development tax credits.

PETITION OF:

NAME:

Mark C. Montigny

DISTRICT/ADDRESS:

Second Bristol and Plymouth

SENATE No. 1881

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 1881) of Mark C. Montigny for legislation relative to economic development tax credits. Revenue.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1925 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to economic development tax credits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 62C, as appearing in the 2022 Official Edition, is hereby amended
2 by inserting after section 89 the following:-

3 Section 90. Sunsets for Tax Incentive Programs

4 (a) For the purposes of Sections 90-92 inclusive, “Tax Incentive” is defined as

5 1. the tax credit in subsection (j) of section 6 of chapter 62 and section 38Q of chapter 63;

6 2. the dairy farmer tax credit in subsection (o) of said section 6 of said chapter 62 and the
7 dairy farm tax credit in section 38Z of said chapter 63;

8 3. the U.S.F.D.A. user fees credit in section 31M of said chapter 63 and subsection (n) of
9 said section 6 of said chapter 62;

- 10 4. the film tax credit in subsection (b) of section 38X of said chapter 63 and subsection (l)
11 of said section 6 of said chapter 62;
- 12 5. the credit for cost of qualifying property in subsection (m) of said section 6 of said
13 chapter 62 and section 38U of said chapter 63;
- 14 6. the life sciences refundable jobs credit in subsection (r) of said section 6 of said
15 chapter 62 and section 38CC of said chapter 63;
- 16 7. the deductions for qualifying clinical testing expenses in section 38V of said chapter
17 63;
- 18 8. the credit for qualified research expenses in section 38W of said chapter 63;
- 19 9. the historic rehabilitation tax credit in section 38R of said chapter 63 and section 6J of
20 said chapter 62;
- 21 10. the low-income housing tax credit in section 31H of said chapter 63 and section 6I of
22 said chapter 62;
- 23 11. the medical device tax credit in section 31L of said chapter 63 and section 61/2 of
24 said chapter 62;
- 25 12. the refundable research credit in subsection (j) of section 38M of said chapter 63;
- 26 13. the economic development incentive program in subsection (g) of said section 6 of
27 said chapter 62 and section 38N of said chapter 63;
- 28 14. the donated land tax credit in subsection (p) of said section 6 of said chapter 62 and
29 section 38AA of said chapter 63;

30 15. the abandoned building renovation deduction in section 38O of chapter 63;
31 16. the credit for company shuttle van purchase or lease expenses in section 31E of
32 chapter 63; and
33 17. any transferrable or refundable credits under chapter 62 and 63 established on or after
34 July 1, 2010.

35 (b) For the purposes of Sections 90-92 inclusive, “Sunset Provision” is defined as, text
36 contained in law requiring the law to expire and lose force of law unless reauthorized by an act
37 of the legislature.

38 (c) Notwithstanding any general or special law to the contrary, all tax incentive as
39 defined in subsection (a) shall expire within one year of the passage of this act unless
40 reauthorized by an act of the legislature after review and examination of each such tax incentive.
41 Upon each reauthorization, the legislature shall include a sunset provision to take effect within 3
42 years of the date of reauthorization.

43 (d) Any future program that awards a transferable or refundable tax credit to any taxpayer
44 shall include a sunset provision with an expiration date set up to 3 years after of the initial
45 passage of the program. Upon each reauthorization, the legislature shall include a sunset
46 provision to take effect within 3 years of the date of reauthorization.

47 (e) The Inspector General in consultation with the Department of Revenue shall:-

48 (1) review and evaluate each tax incentive with a sunset provision scheduled to take
49 effect in a given year.

50 (2) Upon reviewing each tax incentive, recommend to continue the tax incentive without
51 changes, amend the tax incentive, or eliminate the tax incentive.

52 (3) submit a written report containing an explanation of the recommendations to the
53 legislature. The report shall include a detailed description of the committee's reasoning,
54 analyses, and any data collected pursuant to paragraph (4) of this subsection.

55 (4) consider the following factors when evaluating and reviewing a tax incentive:

56 (i) Whether the tax incentive is achieving the policy goals and purposes that it was
57 intended to address

58 (ii) The revenue forgone to administer the tax incentive

59 (iii) The benefit derived from the tax incentive

60 (iv) The extent to which the tax incentive is helping residents, businesses, or other entities
61 within the commonwealth

62 (v) Number of jobs created by the tax incentive (if applicable)

63 (vi) Any other information the Inspector General deems valuable in considering whether
64 or not the tax incentive program achieved its desired public policy outcome

65 (5) use any available resources to evaluate each tax incentive including, but not limited
66 to, commissioning a report from any agency, such as the Department of Revenue, detailing the
67 tax incentive program and consisting of any content that the subcommittee deems necessary,
68 referring to other states evaluations of similar tax incentives, or citing academic studies or
69 surveys of similar tax incentive programs.

70 SECTION 2. Chapter 62C is hereby amended by inserting after section 90 the following:-

71 Section 91 Clawback Provision for Tax Incentives

72 (a) Any law containing a sunset provision pursuant to section 90 of chapter 62C shall
73 include a clawback provision.

74 (1) The clawback provision, so called, which permits the commonwealth to recoup
75 foregone tax receipt from tax incentives recipients who fail to achieve or meet stated goals and
76 benchmarks, including but not limited to job creation goals set for in their tax credit programs.

77 (2) Whenever a benefit is claimed, awarded, or otherwise obtained pursuant to a law
78 containing a sunset provision as defined in section 90 of chapter 62C, the awarding entity must
79 include explicit goals and benchmarks to be achieved by the recipient tax payer.

80 (3) Whenever a benefit is claimed, awarded, or otherwise obtained pursuant to a law
81 containing a sunset provision as defined in section 90 of chapter 62C, the awarding entity must
82 inform the recipient about the clawback provision by providing a copy of this section and
83 explaining ramifications of his or her failure to meet the stated goals and benchmarks.

84 SECTION 3. Chapter 62C is hereby amended by inserting after section 91 the following:-

85 Section 92

86 (a) Before submitting any new tax incentive program for legislative approval, the
87 governor shall include in the governor's legislative proposal or bill for the new tax incentive the
88 following:

89 (1) The new tax incentive’s clearly specified public policy purpose, goals, and desired
90 outcomes

91 (2) A finding that the tax credit incentive is expected to be highly effective at achieving
92 the stated public policy purposes

93 (3) Estimates of forgone revenue from the new tax credit incentive

94 (4) For discretionary grant like tax incentives, an overall annual dollar cap on foregone
95 revenue

96 (5) For discretionary grant like tax credit programs, the criteria to be applied by the
97 administering agency in making discretionary awards of tax credit programs and

98 (6) For discretionary grant like tax credit programs, provisions for the tax credit
99 program’s administration including, but not limited to, clear written conditions and
100 commitments, public disclosure of recipients and tax benefits, if tax incentive conditions are not
101 met by the recipient, threshold for further review and enforcements including the use of the tax
102 incentive’s clawback provision, and a competitive award process.